

# Employment Contracts under the Labor Law and Press Labor Law

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This article outlines the requirements for employment agreements under the Turkish Labor Law and Press Labor Law. The first section will briefly explain the types of employment agreements under the Labor Law, the second part will examine the termination of employment agreements and the consequences under the Labor Law, and employment agreements under the Press Labor Law and its consequences will be dealt with in the last section.

## Employment Agreements under the Labor Law

Pursuant to the Turkish Labor Law, no. 4857, (“**Labor Law**”), employment agreements can be either for a definite or indefinite period. Employment agreements can also be classified as full-time, part-time and agreements with trial periods. There are also other types, such as on-call and at home work.

### Employment Agreements for a Definite Term

According to Article 11 of the Labor Law, an employment agreement between an employer and employee can be considered for a definite period if it is concluded in writing and any one of the following conditions exists:

- If it is concluded for definite term work,
- If its term depends on an objective condition such as completion of a certain task, or
- If its term is subject to the completion of a certain aim.

According to the second and third paragraph of Article 11 of the Labor Law, an employment agreement for a definite period may not be concluded more than once or successively. In such cases, the employment agreement is deemed to have been concluded for an indefinite period from the commencement date of the employment agreement.

However, if an objective condition occurred at the time of the execution of an employment agreement for a definite period and this condition continues to exist or if a new objective condition occurs at the end of the term, such agreement may be renewed.

### Employment Agreements for an Indefinite Term

An employment agreement is deemed to have been concluded for an indefinite period where the employment is not subject to a fixed term. Employment agreements for indefinite periods are more common in Turkey than employment agreements for definite periods.

## Termination of Employment Agreements

### Termination of Employment Agreements with a Definite Term

Employment agreements with a definite term are automatically terminated upon the expiry of their term; however, this kind of agreement can be renewed explicitly or tacitly (i.e. continuance of employment without any opposition by the employer). The term of such renewal is calculated as stated below, depending on the terms of the employment agreement.

- If the term of the employment agreement is less than one (1) year, the agreement is deemed to be renewed for the same period.
- If the term of the employment agreement is more than one (1) year, the agreement is deemed to be renewed for one (1) year.

In addition, renewal of employment agreements with a definite term should be based on a just cause. An employment agreement for a definite term renewed more than once will be considered a successive agreement. In light of the Court of Appeals’ consistent rulings, such an agreement is deemed as indefinite from the beginning.

Termination of an employment agreement for a definite term before the expiration of the agreement term can be made pursuant to Article 25 of the Labor Law. Accordingly, the employment agreement for a definite term may only be terminated for a just cause (immediate termination).

In the event that an employment agreement for a definite term is terminated before the expiration date without a just cause, in accordance with the provisions of the Turkish Law of Obligations, the employee may claim compensation from the employer equal to the amount that would have been paid to the employee had the agreement not been terminated.

#### Termination of Employment Agreements with an Indefinite Term

Employment agreements for an indefinite term may be terminated for either a just or valid cause. Accordingly:

#### Termination with Prior Notice

According to Article 17 of the Labor Law, either the employer or the employee may terminate an indefinite term employment agreement at any time upon prior notice.

The Labor Law defines the following termination notice periods applicable to employment agreements:

Time Employed	Notice Required
Less than 6 months	2 weeks
6 months - 1.5 years	4 weeks
1.5 - 3 years	6 weeks
More than 3 years	8 weeks

The employer also has the right to terminate the employment agreement without prior notice provided that it pays compensation equal to the expected earnings (based on the current salary) of the employee. If the employment agreement is terminated by the employer in bad faith (i.e., if the employee testifies against the employer in court and the employer terminates the agreement for that reason), the employee would also be entitled to claim compensation, the so-called "bad faith compensation" which is three (3) times the employee's salary for the notification period. Bad faith compensation is only applicable to workplaces employing fewer than thirty (30) employees. Workplaces employing more than thirty (30) employees can be ordered to reinstate wrong-

fully dismissed employees.

- Valid Cause

In addition, pursuant to Article 18 of the Labor Law, the employment agreement of an employee employed for an indefinite term who has been working for at least six (6) months in a workplace with thirty (30) or more employees may only be terminated by the employer due to;

- the employee's incompetence,
- the employee's misbehavior or
- the conditions of the work, workplace or enterprise.

Valid causes mentioned in this item (ii) are not subject to the numerus clauses principle. Hence they are subject to extensive interpretation in each case.

In addition, as per Article 19 of the Labor Law, an employment agreement must be terminated in writing and the reason for termination must be clearly and definitely expressed. The said reason has binding effect for the parties and cannot be changed after the termination.

- Defense

The employer is also required to record the employee's statements of defense before the termination date if the employee's agreement is for an indefinite term and if the employee is being terminated for one of the first two reasons in the above paragraph item (ii).

There are no procedural rules regarding the defense. However, drafting the minutes of the employee's defense would be a reasonable practice to prove the satisfaction of the obligation in case of a dispute. Such minutes should be signed by the negotiators and the employee him/herself. The defense of the employee should be heard within a reasonable period starting from the date that the employer became aware of the valid cause for termination.

- Severance Allowance

The employee has the right to a severance allowance in the event of dismissal for a valid cause as mentioned above.

If a higher amount is not stated in the employment agreement or in the collective bargaining agreement, the severance allowance will be equal to an

aggregate amount of thirty (30) days' salary of the employee for each year of service until the date of the termination. The calculation is based on the employee's latest salary. According to the Labor Law, the maximum amount of monthly salary that will be taken into consideration in calculation of severance allowance is 2,617.70 TL.

- Reinstatement

Article 21 of the Labor Law states that if a court decides that,

"...the termination is unjust because no valid cause has been given or the alleged cause is invalid, the employer must reinstate the employee to work within one month."

The same court giving this verdict will also determine the amount of compensation to be paid to the employee if he/she is not reinstated within one (1) month. In such cases, the courts will decide whether the employee is to be re-employed, or, if not, the employer must pay compensation equal to the employee's salary for a period of four (4) to eight (8) months, together with a maximum of four (4) months' salary which is awarded for the unemployment period. In addition, the employee's right to claim severance allowance is reserved. The employee must apply to the employer within ten (10) days of the notice of the court. This provision is not applicable to the representatives of the employer.

### Immediate Termination Due to Just Causes

Regardless of whether for a definite or an indefinite term, an employment agreement can be terminated immediately before it expires or without complying with the notification periods for a just cause. Just causes for the employee and the employer are as follows:

i) Just causes for the employee:

- a) If the work conditions are dangerous for the health or life of the employee due to reasons arising from the characteristics of the work,
- b) If the employer or another employee that continuously works closely or with the employee is infected with an epidemic disease or a disease that is incompatible with the work,
- c) If the employer misleads the employer with respect to the essential points of the employment agreement at the time of its conclusion,
- d) If the employer says bad words (curses) about the

dignity and honor of the employee or one of his/her family members or behaves likewise,

- e) If the employer bothers or threatens the employee or one of his/her family members or encourages, tempts or forces the employee or one of his/her family members into an unlawful action or commits a crime against the employee or one of his/her family members that requires imprisonment or makes false or damaging imputations or accusations about the employee's honor and dignity,
  - f) If the employee is sexually harassed in the workplace by the employer, other employees or third parties, and the employer does not take the necessary actions even after notification,
  - g) If the salary of the employee is not calculated and paid in accordance with the law and the provisions of the employment agreement,
  - h) If it has been agreed that the employee will be paid for a certain number of pieces of work or for a quantity of work and he/she has been given less than agreed, if the salary difference has been paid on an hourly basis and the deficient part of the salary has not been paid to the employee, or the terms of employment are not applied,
- i) If hardship conditions occurring in the workplace of the employee cause work to be discontinued for more than one (1) week.

ii) Just causes for the employer:

Health Reasons:

- a) If the employee is infected with a disease or incurs a disability resulting from his/her own intention, improper lifestyle, or an alcoholism habit, and therefore does not come to work for three (3) consecutive business days or more than five (5) business days in a month,
- b) If it is determined by the Medical Board that the employee is infected with a disease that cannot be cured and is not fit for employment.

The termination of the employment agreement for immoral, dishonorable or malicious conduct or other similar behavior by an employee:

- a) If the employee misleads the employer by representing that he/she has the necessary qualifications or conditions required for one of the essential aspects of the employment agreement despite the fact that he/she does not have those qualifications or conditions, or gives false information and promises,
- b) If an employee says bad words (curses) about the dignity and honor of the employer or one of his/her

family members or behaves likewise, or makes false, damaging imputations about the honor and dignity of the employer,

c) If the employee sexually harasses another employee,

d) If the employee harasses the employer, one of his/her family members or another employee, or drinks alcohol or uses drugs in the workplace,

e) If the employee engages in behavior that is against honesty and fidelity such as the misuse of the employer's trust, theft, or disclosing the trade secrets of the employer,

f) If the employee commits a crime in the workplace that is punishable with imprisonment of more than seven (7) days or with a penalty that cannot be deferred,

g) If the employee does not come to work for two (2) consecutive business days, for any two (2) business days in the month following a holiday, or for three (3) business days in a month without obtaining prior permission from the employer or without basing it on justifiable grounds,

h) If the employee does not fulfill his/her duties although he/she has been reminded to fulfill them,

i) If the employee willfully or neglectfully endangers work safety or causes damage or loss to the property or machines, facilities or other goods and materials that are owned or possessed by the employer in such a way that the damage or loss exceeds the value of thirty (30) days of the employee's salary.

Force Majeure:

a) If hardship conditions occur in the workplace preventing the employee from executing his/her duties for more than one (1) week,

b) Absence of the employee lasting more than the notification periods, if he/she is arrested or is taken into custody.

The employer will be able to terminate the employment agreement based on those just causes without giving a warning term to the employee and will be exempted from paying severance allowance for the causes mentioned in the scope of the termination of the employment agreement for immoral, dishonorable or malicious conduct or other similar behavior by an employee.

However, the right to terminate the employment agreement based on immoral, dishonorable or malicious conduct or other similar behavior must be exercised within six (6) days of the concerned party's being informed or becoming aware of, but in any case within one (1) year following, the occurrence of such

circumstances. The employee can apply to the court at any time if the cause of termination is not justifiable by the reasons mentioned above.

### Employment Agreements under the Press Labor Law

Law no. 5953 was amended by Law no. 212, which regulates the employment relations between press employees and the press employers ("**Press Labor Law**") and applies in the press sector. Pursuant to Article 4 of the Press Labor Law, employment agreements shall be made in writing and especially for the type of work to be conducted by the press employee, the payments to be made to the press employee and the length of service of the press employee in the press sector shall be included in the written employment agreement. According to Article 6 of the Press Labor Law, an employment agreement can be executed for either a definite or indefinite term.

Article 38 of Broadcasting Law no. 3984 requires that employees who are employed in the news departments of radio and television companies are subject to the Laws Regulating the Relations between Employers and Employees Working in the Press. The Radio and Television Supreme Council (RTÜK) determines the minimum number of press card holders to be employed in the news department. According to Article 20 of the Regulation on Minimum Administrative and Financial Conditions ("**Regulation**"), this number cannot be less than thirty (30).

According to the Regulation, the manager(s) responsible of a national broadcasting company must meet certain conditions such as being a university graduate, being a Turkish citizen and not being prohibited or limited from public services etc.

Press employees are entitled to some special rights by the Press Labor Law, such as; (i) the press employee will be entitled to a promotion after working two (2) years, (ii) press employees having five (5) periods of service in total (including under different employers) will be entitled to severance payment, (iii) unless otherwise agreed in the employment agreement, a press employee can carry on another business, (iv) a press employee will be entitled to one (1) month's salary premium at the end of each year, (v) under some conditions a press employee will be entitled to be paid salary during military service or pregnancy, (vi) a press employee who has been working more than one (1) year will be entitled to four (4) weeks annual leave and a press employee who has been working more than ten (10) years will be entitled to six (6) weeks annual leave.

## Termination of Employment Pursuant to the Press Labor Law

Pursuant to the Press Labor Law, either the employer or the employee may terminate an indefinite term employment agreement at any time upon prior notice. The periods of notice stated below are the minimum and may only be extended by the employment agreement.

### Termination by the Employer

Time Employed	Notice Required
Less than 5 years	1 month
5 years or more	3 months

The length of the notice period is based on the compensation and shall not be counted as annual leave.

Upon termination, unused leave is to be paid as an advance.

An employee whose employment agreement is terminated in accordance with Article 6 of the Press Labor Law shall be entitled to have termination compensation which will be calculated according to the term of employment. The last month's amount is based on the amount of the termination compensation for each year. One (1) month's payment is given for every year, however, a period of less than six (6) months and the first year of the agreement shall not be counted.

If the press employee (whose employment agreement is terminated and who is entitled to severance payment) starts to work under another employer, the new severance payment entitlement of the employee shall be calculated from the date the employee starts

his/her work under the new employer.

If the employer cannot pay the press employee's severance payment at once, the payment shall be made in at most four (4) installments and the total installment period shall not exceed one (1) year.

### Termination by the Press Employee

The press employee may terminate an indefinite term employment agreement at any time by giving one (1) month's prior notice.

- Termination without waiting the notice period:

The press employee may terminate the employment agreement without waiting the notice period in the event of a demonstrable change which creates a derogatory state to the reputation and standing or moral advantage to the personality and perspective of a periodic broadcast.

A press employee who terminates the employment agreement on the basis of his/her rights stated above may claim the same amount of compensation as if it was terminated due to a fault of the employer.

The employer may terminate the employment agreement immediately without notice if the press employee prejudices the reputation and standing of the periodic broadcast through acts or behavior resulting from deliberately gross negligence of his/her duties. However, in such cases, the right to terminate an employment agreement with just cause must be exercised within six (6) days starting from the date on which the employer becomes aware of such an act/misbehavior of the employee and within one (1) year at the latest from the commencement date of the act/misbehavior of the employee.